

**Office of the United Nations High Commissioner for Human Rights, Geneva, Switzerland**

***Open-ended intergovernmental working group (OEIGWG) call for written contributions on the discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (PMSCs)***

**Comments submitted by The Centre for Socio-Eco-Nomic Development (CSEND), an NGO registered with the Swiss authorities since 1993, ECOSOC accredited in Special Consultative Status since 2014**

**Geneva, 3<sup>rd</sup> September 2019**

Mandate

The Open-ended Intergovernmental Working Group (OEIWG) is mandated to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (Human Rights Council resolution 36/11)

The headings below have been copied from the Discussion Document made available by the Chair of the OEIGWG on PMSCs

**1. *Definitions and Interpretations***

- i. PMSCs
- ii. PSCs
- iii. PMCs
- iv. Complex Environments

**CSEND's comments:**

PMSCs should not be separated in PMCs or PSCs for they operate in a continuum, particularly in hybrid warfare or complex environments but should also include PMSC services regarding oil tankers, refugees, illegal migrants and offices of diplomatic missions and UN agencies.

## 2. **Objectives of the regulatory framework**

- i. Ensuring respect for human rights by the private military and security industry operating in complex situations;
- ii. Ensuring the transparent use of the private security military and industry;
- iii. Ensure that the rights of individuals are not negatively impacted upon by the activities carried out by such private military and security companies.

CSEND comments:

Any regulatory framework proposed for PMSC should work with other Human Rights actors to encourage Governments to adhere to, ratify relevant international human rights and humanitarian law instruments.

Governments should also be required to ensure that arrangements are in place for independent monitoring and reporting on PMSC activities in relation to s international human rights law and international humanitarian law by international law experts.

## 3. **Principles**

- i. Effectiveness, in that they must have a genuine, significant and positive impact on performance, rather than just offering process without substantive change and, to that end, must be based on third party rather than self-regulation;
- ii. inclusiveness, in that they must impact on the performance of all companies, and not just those companies who are already achieving appropriate standards, although perhaps not in a fully measurable and independently verifiable manner;
- iii. transparency through robust, independent processes which addresses broader concerns about the integrity of voluntary or self-regulatory systems; and
- iv. affordability, in that regulation must be proportionate to operational need, and companies should only have to demonstrate conformity with one accepted and recognized standard.

CSEND comments:

Conformity of guiding principles for PMSCs should be based on the application of principles that will be defined by this Regulatory Framework

ICoCA should be given mandate to register and assess conformity of PMSCs based on the principles of the future Regulatory Framework

Pending the completion of the OEIWG, the following standards can be used for national procurement decisions only but not as substitute for the coming principles of the Regulatory Framework namely:

PSC.1 – U.S. standard for companies providing security services on land.

Certification Bodies: Intertek, MSS Global

ISO 18788 – International standard for companies providing security services on land.

Certification Bodies: Intertek, MSS Global

ISO 28007 – International standard for companies providing maritime security services.

Certification Bodies: LRQA, MSS Global

Pending the finalisation of the future Regulatory Framework, States and PMSCs should be invited to prepare baselines on conformity of PMSCs using the list of current standards.

#### **4. Contracting States**

- i. Determine which military/security services the state may not contract for;
- ii. Establish a PSC and PMC procurement process that incorporates an assessment of a company's capacity to perform services in conformance with the law, including robust criteria for the selection of the company;
- iii. Incorporate requirements into government contracts to ensure respect for national law, human rights law, and applicable international humanitarian law, including providing relevant guidance;
- iv. Monitor and ensure accountability, including through addressing issues of jurisdiction and immunities, for companies operating under a government contract.

CSEND comments:

There should be no separation of terms (PMC and PSC), both should be combined to PMSCs since larger companies operate in both fields and use subsidiaries in other countries to avoid full responsibility for both sub-fields

If the Montreux Document is the basis for the definition of Contracting States, the question is to identify the State responsible (jurisdiction) for those PMSCs. For instance for a British, an American or a Russian PMSC, is it UK, USA or Russia or the country where they are registered? If responsibility is deemed to be "shared", mechanisms should be developed to ensure shared accountability.

States should be encouraged to create mechanisms to support third party monitoring and regular (annual) reporting, within a specified timeframe. ICoCA should be given mandate to monitor states' compliance with the Regulatory Framework

## 5. ***Territorial states***

- i. Ensure that the private security industry within their jurisdiction is effectively controlled and regulated;
- ii. Determine which services may not be carried out by PMCs and PSCs in their territory;
- iii. Establish a process to grant authorization for the performance of military and security services with robust criteria for licensing;
- iv. Monitor PMCs and PSCs that operate on the state's territory.

### CSEND comments

There should be no separation into PMCs and PSCs but rather keep consistently PMSCs for reasons listed above

If the Montreux Document is the basis for the definition of *Territorial States*, the question is to identify the State's regulatory responsibilities for those PMSCs operating in their territory.

ICoCA should be given mandate to monitor territorial states' compliance with the Regulatory Framework

## 6. ***Home states***

- i. Determine which military/security services may not be exported;
- ii. Establish a process to grant authorization for the export of military and security services with robust criteria for licensing;
- iii. Regulate the conduct of PMSCs and personnel;
- iv. Monitor and ensure accountability

### CSEND comments:

There should be no separation into PMCs and PSCs but rather keep consistently PMSCs for reasons listed above

If the Montreux Document is the basis for the definition of *Home States*, the question is to identify the Home state responsible for those PMSCs in case PMSCs operate in different countries and have legal registration in several Home states.

Home states must ensure that activities of PMSCs operating in other states comply fully with national requirements in line with internationally agreed standards that will be defined with the Regulatory Framework

ICoCA should be given mandate to monitor states' compliance with the Regulatory Framework

## 7. ***States of nationality***

- i. Determine which military/security services may not be performed abroad by nationals of the state;
- ii. Establish a process to grant authorization for the nationals to perform military and security services abroad, including criteria for licensing;
- iii. Regulate the conduct of PMSC personnel;
- iv. Monitor and ensure accountability; and
- v. Ensure access to remedy for victims where violations have occurred.
- vi. The recruitment of its citizens and permanent residents to work for PMSCs without a transparent and fair authorisation process from a designated regulatory authority.

**CSEND comments:**

**Determine by law the conditions under which PMSCs' personnel may operate using additional national passports**

**8. *Private Military and Security Companies***

- i. Establish and implement compliance mechanism to ensure compliance with national and international law, selection, vetting, and training of personnel performing military/security services;
- ii. Establish grievance mechanism;
- iii. Supervise and hold accountable PMSC personnel that engage in misconduct.

**CSEND comments:**

**Ensure that PMSC personnel are not classified as independent entrepreneurs. As long as they operate under contract of a PMSC, the respective PMSC is responsible for their compliance with principles of the Regulatory Framework no matter whether the executing personnel is a direct employee, or independent entrepreneur or subcontractor**

**Additional Point:**

9. **Non-state contractors of PMSCs, be they Transnational Corporations or International Organisations, should comply with the principles of the Regulatory Framework and be monitored by ICoCA**

**References used for CSEND's comments:**

1. Saner, R, Uchebgu, A, Yiu, L., 2019, "Private military and security companies: legal and political ambiguities impacting the global governance of warfare in public arenas", Asia Pacific Journal of Public Administration, 2019Vol. 41, No. 2, 63-71, <https://doi.org/10.1080/23276665.2019.1622325>
2. UN Library Talk Event: "Discussion on the Evolution of Warfare", 2018, UN Geneva, 5th December 2018, <http://www.diplomacydialogue.org/conferences/political-diplomacy/180->

evolution-of-warfare-the-respect-of-international-humanitarian-law-and-international-human-rights-law-by-private-military-security-companies.html

3. Saner, R., "Private Military and Security Companies: Industry-Led Self Regulatory Initiatives versus State-Led Containment Strategies", 2015, CCDP Working Paper 11, The Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies, Geneva.